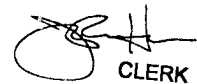


UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**

MAR 17 2005

  
CLERK

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UNITED STATES OF AMERICA,

CR 02-50044

Plaintiff,

vs.

GOVERNMENT MOTIONS IN LIMINE

MARTIN TIBBITTS,

Defendant.

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Comes now the United States of America, through its attorneys, Michelle G. Tapken, Acting United States Attorney, and Gregg S. Peterman, Assistant United States Attorney, to move in limine to bar the defendant from introducing certain evidence.

**I. Evidence of Alibi**

On November 24, 2004, the United States requested alibi notice pursuant to Federal Rule of Criminal Procedure 12.1. Under the rule, once a valid alibi notice request has been filed by the government, the defendant must, “[w]ithin 10 days after the request, or at some other time the court sets” (the Court did not herein set a different time for service of alibi notice), the defendant must serve his alibi notice. To date, the defendant has not served alibi notice. Subsection (e) of the same rule provides for exclusion of “the testimony of any

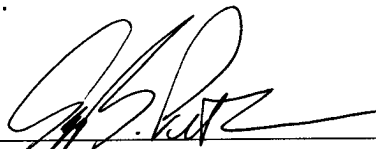
undisclosed witness regarding the defendant's alibi." Fed.R.Crim.P. 12(e). The United States respectfully this Court bar the defendant from introducing evidence of alibi. United States v. Nelson-Rodriguez, 319 F.3d 12, 35 (1<sup>st</sup> Cir. 2003)(exclusion of evidence proper for late filing of notice).

## **II. Evidence of Victim's Substance Abuse**

The United States has reason to believe the defendant will seek to disparage the victim through evidence of her use of alcohol and possibly marijuana on occasions *other than during the course of this assault upon her by the defendant*. Elicitation of this evidence would constitute an improper attack on the character of the victim under Federal Rule of Evidence 608(a). Such evidence, if true, says nothing about the victim's character for truthfulness nor is it otherwise relevant. Fed.R.Evid. 402.

Dated this 17<sup>th</sup> day of March, 2005.

MICHELLE G. TAPKEN  
Acting United States Attorney  
By:

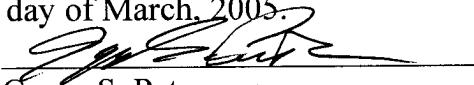


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GREGG S. PETERMAN  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Gregg S. Peterman, hereby certify that I served a true and correct copy of the above and foregoing Government Motions in Limine on Monica D. Thomas, Assistant Federal Public Defender, 703 Main Street, 2<sup>nd</sup> Floor, Rapid City, South Dakota, by first class mail, postage prepaid, and by facsimile transmission this 17<sup>th</sup> day of March, 2005.

  
Gregg S. Peterman